

HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE WASHINGTON MUTUAL
MORTGAGE BACKED SECURITIES
LITIGATION

Master Case No. 2:09-cv-00037-MJP

This Document Relates to: ALL CASES

AMENDED JOINT DISCOVERY PLAN

Pursuant to Rule 26(f)(3) of the Federal Rules of Civil Procedure and the Court’s Scheduling Order dated October 29, 2010, and subject to approval of the Court, the parties to the above-captioned action (the “Parties”) agree and stipulate to the following Plan to govern discovery in this litigation.

Where the Parties were unable to reach an agreement, separate sentences or sections provide Plaintiffs' position and the position of Defendants.

1. Discovery Subjects and Timing

The general subjects as to which discovery will be addressed in this action include, but are not limited to, the following:

- The loan underwriting guidelines in place at Washington Mutual Bank (“WMB”) during the period of time each loan underlying the securities at

1 issue was originated and WMB's adherence to those guidelines.

- 2
- 3 • The underwriting guidelines that are described in the offering documents.
 - 4 • The origination, underwriting, pooling, servicing and performance of each of
 - 5 the loans underlying the securities at issue.
 - 6 • The trading, value and performance of the securities at issue.
 - 7 • The appropriateness of class treatment.
 - 8 • The ability of lead plaintiffs, named plaintiffs, and their counsel to adequately
 - 9 represent any class that is certified in the action.
 - 10 • Quality control relating to the loans and the originators of the loans;
 - 11 • Information concerning the performance of the loans from the time of the
 - 12 offerings through the present;
 - 13 • Warehouse lending or other financial arrangements used by Defendants to
 - 14 support their lending and securitization operations – Defendants do not agree
 - 15 this area of inquiry is relevant. The parties are continuing to discuss this topic
 - 16 in connection with Plaintiffs' first request for production of documents to
 - 17 determine whether and to what extent documents of this type should be
 - 18 produced.
 - 19 • Defendants' due diligence with respect to the accuracy of statements made in
 - 20 connection with the offerings;
 - 21 • Defendants' affirmative defenses.

22 Defendants do not necessarily agree with the relevance of all of the discovery topics
23 plaintiffs seek, in particular the subject of warehouse lending.

24 Many of the documents pertaining to the issues identified above, particularly
25 documents relating to loan underwriting at WMB, including the loan files for each of the
26 loans underlying the securities at issue, are not in the possession, custody, or control of any
27 of the Defendants in this action. Therefore, negotiations as to discovery protocols and forms
of production necessarily require the participation of, at least, JPMorgan Chase Bank,

1 National Association (“JPMC”), which purchased assets of WMB and has information
2 relevant to the claims and defenses of the parties. Plaintiffs have served two subpoenas on
3 JPMC for production of documents, and the parties have met and conferred with JPMC to
4 discuss how discovery will proceed with respect to documents in the possession of JPMC.
5 Going forward, the Parties will work with JPMC to conduct discovery in an efficient manner.

6 In order to expedite the discovery process, Plaintiffs requested that JPMC grant
7 Plaintiffs access to all documents previously produced by JPMC to the Permanent
8 Subcommittee on Investigation (“PSI”) of the United States Senate and thereafter reproduced
9 to parties in *In re Washington Mutual, Inc. Securities, Derivative and ERISA Litigation*, No.
10 2:08-md-01919-MJP (the “MDL Action”) per the Court’s Order in that case (Dkt. #115).
11 Defendants have withdrawn their request to review or limit the scope of the PSI documents to
12 be produced, and JPMC has agreed to produce a copy of the PSI documents within ten days
13 following the Court’s approval and entry of the Stipulated Protective Order.

14 For documents other than those included in the PSI production, the parties and JPMC
15 are working collectively to efficiently identify other responsive documents in JPMC’s
16 possession, including the development of a list of custodians and a set of search terms
17 designed to identify other documents that JPMC will produce to the parties. Defendants’
18 initial disclosures under Rule 26, which are being served today, will identify individuals
19 likely to have discoverable information who may also be appropriate custodians for searches
20 for relevant documents. Defendants are also working to identify additional custodians who
21 may be appropriate for document searches as well. Defendants are also developing a list of
22 search terms, which they will provide to Plaintiffs for Plaintiffs’ input and discussion to reach
23 an agreement on the use of searches to identify responsive documents.

24 The parties agree that discovery should not be bifurcated, but recognize that discovery
25 relating to class certification will necessarily be prioritized to comply with the Scheduling
26 Order, and will work collectively to ensure that class certification-related discovery is
27 accomplished expeditiously.

1 2. Protective Order

2 The Parties have agreed to a Stipulated Protective Order and Stipulated Order
3 Regarding “Clawback” of Inadvertently Produced Documents (the “Protective Order”). The
4 Protective Order was submitted to the Court for approval on November 11, 2010.

5 3. Discovery Disputes

6 To the extent that they disagree on whether certain documents or categories of
7 documents shall be produced, the Parties shall cooperate to clearly delineate their areas of
8 disagreement so that their disagreements can be resolved by the Court following the process
9 set forth in Local Rule 37.

10 4. Document Production

11 Production of documents (including Electronically Stored Information (ESI)) will be
12 made on a rolling basis, as soon as is practicable. The parties will exercise their best efforts
13 to produce relevant documents in a timely manner and assume that all non-party recipients
14 will do likewise. JPMC has committed to assisting in these efforts to promptly produce
15 documents, and its cooperation in this regard is noted and appreciated by the Parties.

16 To facilitate planning for document review and management, the Parties shall, to the
17 extent practicable, attempt to keep the requesting Party informed as to the expected size of
18 the producing Party’s document production. The Parties recognize that such estimates may
19 prove to be inaccurate and are likely to change over time.

20 5. Electronically Stored Information

21 The Parties are working cooperatively to resolve format of production issues with
22 respect to ESI and will, to the extent practicable, refer technical issues to their technical
23 experts who will communicate directly with each other to resolve such issues. No such
24 issues have arisen to date, and the parties continue to discuss the technical requirements of
25 document production.

26 Upon reasonable notice by another Party, a Party will make available one of its
27 technical experts to discuss basic issues related to ESI production with a technical expert of

1 the requesting Party, including system architecture, type of data (e.g. email, databases, instant
2 messages, voice recordings), format of data, location of data and steps taken to preserve data.

3 The Parties generally agree that ESI will be produced in reasonably usable form,
4 which will include searchable text and accompanying metadata where available. Plaintiffs
5 have served defendants with a request for production of documents, and a subpoena upon
6 JPMC, both of which contain detailed instruction on Plaintiffs' requested format of ESI
7 production. The Parties are working collectively to ensure the technical aspects of the
8 production meet the needs of the Parties and JPMC.

9 The Parties generally agree that to the extent that search terms are used to identify
10 responsive ESI, the producing Party, as the Party most familiar with its own ESI, will be
11 responsible for initially proposing search terms which are in good faith designed to identify
12 the documents in the ESI that should be produced pursuant to the other Party's document
13 requests. Each Party will allow the other Party to examine the list of search terms and permit
14 the other Party to suggest modifications to the list. The Parties agree to work in good faith
15 and expeditiously in determining appropriate search terms.

16 With respect to JPMC, Defendants and JPMC will be responsible for initially
17 proposing the search terms; however, the parties will work collectively to develop the list of
18 search terms that should be used. To the extent search terms are negotiated with other
19 subpoenaed non-parties, the requesting Party and the subpoenaed non-party shall develop any
20 search terms independent from any other Parties who have not also subpoenaed documents
21 from that non-party. A party's participation in the development of search terms shall not
22 waive any right the party may have to request production of certain documents or categories
23 of documents that are not produced through the search term process. Further, the producing
24 Party shall review with the requesting Party the results of any search term usage to determine
25 additional search terms that should also be used or tested, or additional custodians whose
26 documents should be searched, and following production, the requesting Party may request

1 the usage of additional search terms or searches of documents of additional custodians as
2 may be determined during the course of the review of the production.

3 The use of search terms does not obviate any Party from any other obligations that
4 may be imposed by the Federal Rules of Civil Procedure (taking into account the
5 proportionality principles embodied in Rule 26(b)(2)(C)) to locate and produce reasonably
6 identifiable and relevant documents, including responsive ESI, that a Party has reason to
7 believe would not be located by the use of search terms.

8 The Parties understand that different categories of WMB information may be in the
9 possession of JPMC as well as Defendants. The parties are working with JPMC to develop a
10 protocol for narrowing and identifying relevant and responsive information from each source.

11 **6. Privilege Issues**

12 There are not likely to be unusual issues of privilege. The parties have submitted a
13 Stipulated Protective Order and Stipulated Order Regarding “Clawback” of Inadvertently
14 Produced Documents which, among other things, provides for entry of an order under Rule
15 502(d) of the Federal Rules of Evidence.

16 In the MDL Action, JPMC has produced an automatically generated privilege report
17 based on a privilege screen. The Parties agree that, for the time being, the automatically
18 generated privilege report covering the PSI production shall be an acceptable form of
19 privilege log for that production only. The Parties and JPMC are working to develop a
20 protocol for seeking review of certain documents identified by the automatically generated
21 privilege report. The Parties and JPMC hope to reach an agreement on such a protocol by
22 December 10, 2010. The parties are continuing to discuss the form of any privilege log to be
23 produced for additional productions, and the requirements of such a log will be discussed to
24 minimize the burden on the Parties, JPMC and other non-parties while ensuring a reasonable
25 level of review of relevant documents identified as potentially privileged by the producing
26 party. The form and level of review will depend on the volume of documents at issue, which
27

1 is currently unknown. The Parties will finalize an additional protocol for privilege logs by
2 May 15, 2011.

3 **7. Depositions and Interrogatories**

4 Because of the number of Parties and the complexity of issues, the Parties agree that it
5 will be appropriate for each side to take more than the number of depositions authorized by
6 the Federal Rules of Civil Procedure. The Parties further believe, however, that a reasonable
7 limit on depositions can be best determined at a later stage in the discovery process.
8 Consequently, the Parties will agree on the number of depositions available to each side by
9 May 15, 2011 or if unable to agree, will refer the issue to the Court for decision. This does
10 not preclude any party from taking depositions, where appropriate, prior to this date. The
11 fact that a witness has been deposed in connection with the MDL Action will not be the basis
12 for a party's objecting to the deposition of that witness in this action.

13 Because of the number of Parties and the complexity of issues, all Plaintiffs
14 collectively shall not serve more than a total of 75 interrogatories, collectively on all
15 defendants and all Defendants collectively shall not serve more than 75 interrogatories,
16 collectively on all Plaintiffs. This 75 interrogatory limit includes sub-parts.

17 **8. Third Parties**

18 When so requested, a Party shall facilitate production requested by another Party from
19 third parties.

20 To the extent reasonable, and, when confidential information is involved, pursuant to
21 the terms of any protective order entered by the Court meant to preserve confidentiality, a
22 Party shall facilitate another Party's discovery request to a third party by promptly consenting
23 to the production of materials by third parties with respect to which third parties assert that
24 the non-requesting Party's consent is necessary to permit production.

25 To the extent reasonable, and, when confidential information is involved, pursuant to
26 the terms of any protective order entered by the Court meant to preserve confidentiality, a
27 Party shall facilitate another Party's discovery request to a third party by promptly providing

1 information in the non-producing Party's custody or control, such as loan numbers, that third
2 parties assert will facilitate their ability to respond to Plaintiffs' subpoenas.

3 **9. Protection of Expert Materials**

4 The Parties agree that they will consider themselves to be bound by the proposed
5 amendments to Rule 26 of the Federal Rules of Civil procedure regulating discovery from
6 experts, scheduled to enter into force on December 1, 2010 as if that amendment had been in
7 force during the entire course of this lawsuit.

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10 Dated: November 12, 2010

Respectfully submitted,

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I hereby certify that on November 12, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to all counsel of record and additional persons listed below:

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